

**UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION**

|                           |   |                       |
|---------------------------|---|-----------------------|
| UNITED STATES OF AMERICA, | ) |                       |
|                           | ) |                       |
| Plaintiff,                | ) |                       |
|                           | ) |                       |
| v.                        | ) | CIVIL ACTION FILE     |
|                           | ) |                       |
| STATE OF GEORGIA,         | ) | NO: 1:16-CV-03088-ELR |
|                           | ) |                       |
| Defendant.                | ) |                       |
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|                           | ) |                       |

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**THE STATE’S RESPONSE TO PLAINTIFF’S FILING SUPPLEMENTAL  
AUTHORITY**

Defendant State of Georgia (the “State”) responds to Plaintiff’s Notice of Filing Supplemental Authority [Doc. No. 57]. Plaintiff’s supplemental filing explains a ruling on a motion to dismiss order in Georgia Advocacy Office, et al. v. State of Georgia, 1:17-cv-03999-MLB (N.D. Ga. Mar. 19, 2020) entered by the Honorable Judge Brown of this Court in an attempt to entice this Court to enter a similar order (the underlying facts of each case are similar). This lawsuit has at least one additional issue that the related case does not include and that must be decided prior to this lawsuit moving forward.

Here, the Plaintiff is the United States Department of Justice (“DOJ”), while the plaintiffs in the other lawsuit are private citizens. This distinction is important.

As described in the State’s Brief in Support of its Motion to Dismiss [Doc. No. 47], because the Plaintiff is the DOJ, this Court must first answer a threshold question – whether the United States is a proper party to bring a lawsuit under Title II of the Americans with Disabilities Act, 42 U.S.C. §§ 12131 *et seq.* (“ADA”).

One of the State’s contentions is that the DOJ does not have standing to bring a lawsuit under the ADA. As the United States Court of Appeals for the Eleventh Circuit (the “Eleventh Circuit”) continues to consider that question, this case should be stayed pending a final ruling. On September 17, 2019, a three-judge panel of the Eleventh Circuit found that the DOJ does have standing to bring a Title II ADA lawsuit. United States v. Florida, No. 17-13595, 2019 WL 4439465 (11th Cir. Sept. 17, 2019). This Court then lifted the previous stay issued in this lawsuit pending an Eleventh Circuit decision [Doc. No. 45]. Subsequently, the State of Florida filed a Petition for Rehearing En Banc (the “Petition”). Eleventh Circuit Case (Oct. 29, 2019).

Importantly, the Eleventh Circuit recently required the DOJ to file a response to the State of Florida’s Petition and the DOJ filed its response on March 20, 2020. A party cannot respond to a petition for a rehearing en banc without direction from the Eleventh Circuit. 11th Cir. R. 35-6. It is likely that the Eleventh Circuit will rehear the three-judge panel decision. In any event, since the

Eleventh Circuit is determining if it should rehear a threshold issue that will affect the right of the DOJ to bring a lawsuit under the ADA, this Court should stay this lawsuit until the Eleventh Circuit has reached a final decision either by denying the Petition or by granting the Petition and issuing a final opinion on whether the DOJ may bring an ADA claim.

Respectfully submitted this 2nd day of April, 2020.

/s/ Josh Belinfante

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**L.R. 7.1(D) CERTIFICATION**

I certify that this motion has been prepared with one of the font and point selections approved by the Court in Local Rule 5.1(C). Specifically, this motion has been prepared using 14-pt Times New Roman Font.

/s/ Josh Belinfante  
Josh Belinfante

**CERTIFICATE OF SERVICE**

I hereby certify that I electronically filed the foregoing **THE STATE'S  
RESPONSE TO PLAINTIFF'S FILING SUPPLEMENTAL AUTHORITY**  
with the Clerk of Court using the CM/ECF system, which will send e-mail  
notification of such filing to all counsel of record.

This 2nd day of April, 2020.

/s/ Josh Belinfante  
Josh Belinfante